

Entered on Docket

July 06, 2012

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



1 The following constitutes
2 the order of the court. Signed July 6, 2012

3 
4 M. Elaine Hammond
5 U.S. Bankruptcy Judge

6 UNITED STATES BANKRUPTCY COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8
9 In re Case No. 09-42469 MEH
10 STEPHEN ROBERT ALLIO and Chapter 13
11 KAIRRIE SUDDERTH ALLIO,

12 Debtors/

13 MEMORANDUM DECISION MODIFYING CHAPTER 13 PLAN

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15 On June 26, 2012, the court conducted a hearing on the *Amended*
16 *Motion to Modify Chapter 13 Plan* (Dkt. 79) ("Plan Modification")
17 pursuant to Bankruptcy Code §1329 in the above-referenced case. All
18 appearances were made on the record. The following constitutes this
19 court's findings of fact and conclusions of law under F.R.B.P. 7052.

20 Debtors requested their confirmed plan be modified to shorten
21 the plan term from 60 months to the period of payments completed,
22 approximately 39 months, and that upon approval of the Plan
23 Modification Debtors be entitled to obtain a discharge and close
24 their case. The Chapter 13 Trustee ("Trustee") filed an objection.

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1 Debtors replied and provided the supporting declaration of Mr.
2 Allio. At the conclusion of the hearing, the court took the matter
3 under submission. Following the hearing, the Trustee withdrew her
4 objection to the Plan Modification.

5 The Court issues this Memorandum Decision in accordance with its
6 independent obligation to determine whether a plan modification
7 should be approved pursuant to Bankruptcy Code¹ §1329. *United*
8 *Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1381 (2010)
9 (discussing a bankruptcy court's obligation to ensure the plan
10 conforms to the legal requirements for confirmation).

11 Modification of a confirmed Chapter 13 plan is governed by §1329
12 and discretionary. See *Sunahara v. Burchard (In re Sunahara)*, 326
13 B.R. 768, 772 (9th Cir. BAP 2005). Section 1329 incorporates the
14 requirements of §1325(a), thereby requiring that modification of a
15 plan be proposed in good faith. Good faith is determined on a case-
16 by-case basis after reviewing the totality of the circumstances.
17 See *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224-25 (9th
18 Cir. 1999). No single factor is determinative and the court may
19 consider changes in circumstances from initial plan confirmation.
20 See *Mattson v. Howe (In re Mattson)*, 468 B.R. 361, 371 (9th Cir. BAP
21 2012).

22 Mr. Allio's declaration provides competent evidence that the
23 Plan Modification is requested in good faith based on several

24
25 ¹ 11 U.S.C. §101, *et seq.*

significant changes in circumstances affecting the financial position of the family. Since plan confirmation, Mr. Allio has undergone two significant surgeries. He is no longer employed and his current income is based on disability. In addition, the company that Mr. Allio was formerly employed by, and received insurance through, went out of business. Ms. Allio then obtained part-time employment that provided her family with health insurance. However, she is no longer employed by this school. The family's current monthly income is based upon Mr. Allio's disability income, Ms. Allio's part-time income, and federal disability for each of their two children. At the time the Debtors' case was filed, there was positive disposable monthly income. Due to the changes in circumstances, this is no longer the case. In addition, Debtors performed according to their confirmed plan, with interim modifications, for approximately 39 months. It is unlikely that during the remaining term of the plan Debtors' income will increase sufficiently to provide for disposable monthly income.

Accordingly, this court grants Debtors' Plan Modification. Debtors are directed to submit an appropriate order.

END OF ORDER

Memorandum Decision Modifying Chapter 13 Plan

COURT SERVICE LIST

All Recipients

Memorandum Decision Modifying Chapter 13 Plan